Filed 2/14/11 In re E.G. CA2/5

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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| In re E.G., a Person Coming Under the Juvenile Court Law. | B225450<br>(Los Angeles County<br>Super. Ct. No. CK81455) |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>J.G.,<br><br>Defendant and Appellant. | |

APPEAL from an order of the Superior Court of the County of Los Angeles, Randolph Hammock, Juvenile Court Referee. Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Frank J. DaVanzo, Principal Deputy County Counsel for Plaintiff and Respondent.

## INTRODUCTION

Defendant and appellant J.G. (father) appeals from the juvenile court's jurisdictional and dispositional orders as to two of his five children. Father contends that there was insufficient evidence to support the findings that his sixteen- and nine-year-old sons were at substantial risk of sexual abuse.

We hold that there was sufficient evidence from which a reasonable trier of fact could have concluded that father's sexual abuse of his six-year-old daughter, E.G., created a substantial risk that her two older male siblings might also be sexually abused. We therefore affirm the jurisdictional and dispositional orders.

## PROCEDURAL BACKGROUND

The Department of Children and Family Services (DCFS) filed a petition under section 300 alleging, inter alia, that father sexually abused E.G., as defined in subdivision (d) and that such abuse created "a detrimental home environment placing [E.G.'s] siblings [E.] . . . , [N.] . . . , [J.] . . . , and [S.] . . . at risk of physical and emotional harm, damage, danger, sexual abuse and failure to protect" as defined in subdivision (j). The petition was the result of a report made to the police department by E.G.'s teacher who advised that she had seen E.G. "rubbing her genitalia on the back of a chair at school . . . simulating sexual intercourse, moving her hips back and forth on the back of [the] chair." According to the teacher, when she asked E.G. if an adult at home had been sexually abusing her, E.G. disclosed that her father had touched her.

Based on the report, a police officer and a children's social worker (CSW) responded to E.G.'s home and began an investigation. They interviewed some of the children, including E.G. who told them that father had sexually abused her. Specifically, E.G. told the CSW that "'[t]here was this one time I took a shower with my dad. We were playing in the shower. He was playing "doggie" and moving in the shower like a doggie. My daddy was on his back and I was jumping on him. We were in the shower a

long time.'" When the CSW asked E.G. specifically about sexual abuse, E.G. responded, "'My daddy touched my private parts with his fingers. He also rubbed my chest with his hands.'" E.G. also told the CSW that she wanted her brothers to tell father "to stop touching me." The CSW again inquired about sexual abuse at which point E.G.'s eyes "filled with tears and [she] began to cry." E.G. responded that she was "'scared to say the truth.'" [1]

Father denied any abuse stating, "[E.G.] is lying [;] I have never touched her." Mother told the officer and the CSW that "[s]he could not believe her husband would do such a thing."

E.G.'s sixteen-year-old brother, E., told the CSW that he did not believe father abused E.G. and that E.G. was lying about being abused. Her thirteen-year-old sister, N., told the CSW that she did not know what to believe, but that she did not think E.G. "would make up about being sexually molested." E.G.'s nine-year-old brother, J., told the CSW that E.G. had never told him about any sexual abuse by father.

Based on the detention report filed by DCFS, the juvenile court found that DCFS had established a prima facie case for detaining the minors and showing that they were each persons described in section 300. The children were released to mother who was ordered not to allow father unmonitored visits. Father was granted visits with the children under the supervision of an approved DCFS monitor.

At the hearing on jurisdiction, the juvenile court admitted the following exhibits: the detention report and an addendum; the jurisdiction/disposition report; a last minute information; and a police report from the police department. E. G. testified at the hearing and recanted her previous statements concerning sexual abuse by father. At the continued hearing, E.G.'s teacher testified and confirmed the information she had provided to the police about E.G.'s behavior at school and E.G.'s admissions of sexual

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[1] The police officer's report confirmed that during the interview with the CSW, E.G described an incident during which she and father were naked in the shower together playing "doggie." The report also confirmed that E.G. began to cry after she told the CSW that father touched her private parts and was asked about other instances of abuse.

abuse by father. The teacher observed E.G.'s inappropriate classroom behavior on at least four occasions and she also saw E.G. performing "like a pole dance" in a "sexual certain way." According to the teacher, E.G. volunteered that father tickled her neck and underarm and when the teacher asked her if father touched her anywhere else, E.G. "winced" and said "Oh, it's so gross." The teacher encouraged E.G. to "just tell [her]," and E.G. pointed to her "vaginal area." The teacher also informed the juvenile court that she made a video recording with her cell phone of E.G.'s classroom behavior and the court viewed and described the conduct depicted in that recording.

Father testified and denied that he sexually abused E.G. or her siblings. He believed E.G. may have based her allegations of abuse on television shows her siblings watched. He also accused E.G. of lying and stealing.

After hearing the testimony and arguments of counsel, the trial court made the following findings: "The Court: All right. I'm going to make my decision right now. I've reviewed all the evidence. There's no doubt in my mind I should quit and get another job if I believed the recantation of this little girl. This was not a truthful recantation. Everybody in that room knows it was not. And everyone was doing their job. But she was clearly rehearsed, clearly coached. She kept repeating the same things over and over. It was a lie, but it was a lie. And she kept repeating over and over, 'why did you lie?' 'I didn't know what to say. I didn't know what to say. I didn't know what to say.' [¶] Given her entire demeanor and these types of statements, there's no doubt in my mind, not a reasonable doubt, that she was coached. And her recantations were not consistent with the facts. [¶] . . . [¶] I found the teacher very believable, very honest, very professional. And I found her very credible. [¶] The father's statements I did not find credible at all. I felt they were self-serving and didn't really add much to the case."

Based on those findings, the juvenile court sustained the allegations in paragraphs d-1—sexual abuse—and j-1—abuse of a sibling—as modified. The juvenile court dismissed the allegations in paragraphs b-2, d-2, and j-2 for failure to meet the burden of proof. The juvenile court also noted that the allegations in paragraphs a-1, a-2, b-1, b-3, b-4, j-3, and j-4 had previously been dismissed.

At the hearing on disposition, the juvenile court declared the children dependents of the court and removed them from father's custody. The juvenile court ordered that father be allowed visits with a DCFS approved monitor and that mother was not to allow father into their home.

## DISCUSSION

### A. Standard of Review

Father challenges the sufficiency of the evidence in support of the juvenile court's jurisdictional and dispositional findings. We review the juvenile court's jurisdictional and dispositional findings under the substantial evidence standard of review. "On appeal, the 'substantial evidence' test is the appropriate standard of review for both the jurisdictional and dispositional findings. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654 [54 Cal.Rptr.2d 722]; *In re P.A.* (2006) 144 Cal.App.4th 1339, 1344 [51 Cal.Rptr.3d 448].) The term 'substantial evidence' means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. (See *In re Jerry M.* (1997) 59 Cal.App.4th 289, 298 [69 Cal.Rptr.2d 148].)" *In re J.K.* (2009) 174 Cal.App.4th 1426,1433.) "'In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court's determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]' (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564 [135 Cal.Rptr.2d 72].)" (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) "When an appellate court reviews a sufficiency of the evidence challenge, we may look only at whether there is any evidence, contradicted or uncontradicted, which would support the trier of fact's conclusion. We must resolve all conflicts in favor of the court's determination, and indulge all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact. (*In re*

*Katrina C*. (1988) 201 Cal.App.3d 540, 547 [247 Cal.Rptr. 784]; *In re Cheryl H*. (1984) 153 Cal.App.3d 1098, 1132 [200 Cal.Rptr. 789].)" (*In re John V*. (1992) 5 Cal.App.4th 1201,1212.)

**B. Legal Principles**

Father challenges the sufficiency of the evidence in support of the jurisdictional findings as to 16-year-old J. and 9-year-old E. As to both boys, the juvenile court found that they were children described by section 300, subdivisions (d) and (j).

Section 300, subdivisions (d) and (j) provides: "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] (d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code,[2] by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse. [¶] . . . [¶] (j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child."

Both subdivisions (d) and (j) of section 300 require a finding a of substantial risk that J. and E. will be sexually abused by father. Father contends that the evidence that he sexually abused E.G., by itself, is insufficient to support a finding that her older male

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**2** Penal Code section 11165.1 defines sexual abuse as "sexual assault," including rape, sodomy, penetration, copulation, molestation, and intentional touching of the intimate parts of a child, and "sexual exploitation," including employment of a minor to perform obscene acts or acts of prostitution and involving a child in pornography.

siblings were at risk of sexual abuse, citing *In re Maria R.* (2010) 185 Cal.App.4th 48 (*Maria R.*).

The issue of whether a parent's abuse of a female child can support a finding that the abused girl's male sibling is at substantial risk of sexual abuse has been addressed in several cases, including, most recently, in *Maria, R., supra,* 185 Cal.App.4th 48. For example in *In re Karen R.* (2001) 95 Cal.App.4th 84 (*Karen R.*), a father raped his 11-year-old daughter on two occasions in the home. The court in that case held that the sexual abuse of the daughter was sufficient to establish that her younger male sibling was at risk of substantial sexual abuse. (*Id.* at pp. 89-91.) The court in *Karen R.* explained that "[a]lthough the danger of sexual abuse of a female sibling in such a situation may be greater than the danger of sexual abuse of a male sibling, the danger of sexual abuse to the male sibling is nonetheless still substantial." (*Id.* at p. 91.) According to the court in *Karen R.*, "a father who has committed two incidents of forcible incestuous rape of his minor daughter reasonably can be said to be so sexually aberrant that both male and female siblings of the victim are at substantial risk of sexual abuse . . . if left in the home." (*Id.* at pp. 90-91.)

In *In re P.A., supra,* 144 Cal.App.4th 1339 (*P.A.*), a father who touched his nine-year-old daughter twice in her "private area" was found by the juvenile court to have sexually abused the girl. (*Id.* at p. 1343.) The juvenile court further found that the girl's five- and eight-year old brothers were at risk of sexual abuse by reason of the father's abuse of their sister. (*Ibid.*) On appeal, the father argued that there was insufficient evidence to support the jurisdictional findings as to his sons because there was no evidence the father had touched them inappropriately and they were unaware of his abuse of their older sister. (*Id.* at p. 1345.) The court in *P.A.* rejected that argument, reasoning that "we are convinced that where, as here, a child has been sexually abused, any younger sibling who is approaching the age at which the child was abused, may be found to be at risk of sexual abuse. As we intimated in *Karen R.* [*, supra,* 95 Cal.App.4th 84], aberrant sexual behavior by a parent places the victim's siblings who remain in the home at risk of aberrant sexual behavior." (*P.A., supra,* 144 Cal.App.4th at p. 1347.)

In *In re Andy G.* (2010) 183 Cal.App.4th 1405 (*Andy G.*), the court reached a conclusion similar to those discussed above. There, the juvenile court found true the allegations that the father had sexually abused his 12- and 14-year-old step daughters by fondling them, showing them pornographic movies, and masturbating in their presence. (*Id.* at pp. 1408-1410.) The juvenile court further found that the father's two and a half-year-old son was at risk of sexual abuse based on the father's abuse of the boy's two half-sisters. (*Id.* at pp. 1410-1411.) On appeal, the father argued that there was insufficient evidence to support the finding that his son was at risk of sexual abuse because there was no evidence that the father had touched his son or any other juvenile male inappropriately. (*Id.* at p. 1411.) In rejecting that contention, the court in *Andy G.* agreed "with the proposition advanced in *In re P.A.* that 'aberrant sexual behavior by a parent places the victim's siblings who remain in the home at risk of aberrant sexual behavior.' (*In re P.A., supra*, 144 Cal.App.4th at p. 1347.) Here, the only significant difference from *In re P.A.* is the fact that [the son] was only two and one-half years old at the time of the court's orders, so he was not 'approaching the age at which [his sisters were] abused.' (*Ibid.*) . . . But other factors convince us that the evidence was sufficient to support the court's findings that [the son] was at substantial risk of sexual abuse." (*Andy G., supra*, 183 Cal.App.4th at p. 1414.)

There are other cases, however, including *Maria R., supra,* 185 Cal.App.4th 48, that have concluded that a parent's sexual abuse of a female child is not, by itself, sufficient to show that a male sibling is at substantial risk of sexual abuse by that same parent. In *In re Rubisela E.* (2000) 85 Cal.App.4th 177 (*Rubisela E.*), the court reversed a jurisdictional finding that the male children of the father were at risk of sexual abuse based on the father's sexual abuse of their sister. The court reasoned as follows: "We do not discount the real possibility that brothers of molested sisters can be molested [citation] or in other ways harmed by the fact of the molestation within the family. Brothers can be harmed by the knowledge that a parent has so abused the trust of their sister. They can even be harmed by the denial of the perpetrator, the spouse's acquiescence in the denial, or their parents' efforts to embrace them in a web of

denial. . . . [¶] . . . But in the case at bench, while such a showing is possible, there has been no demonstration by the department that 'there is a substantial risk [to the brothers] that [they] will be abused or neglected, as defined in . . . [the applicable] subdivisions.' [Citation.] We must therefore reverse the jurisdictional order as to the brothers and remand for appropriate changes in the dispositional order." (*Rubisela E., supra,* 85 Cal.App.4th at pp. 198-199.)

And in *Maria R., supra,* 185 Cal.App.4th 48, the case upon which father relies, the court held that "[i]n the absence of evidence demonstrating that a perpetrator of sexual abuse of a female child is in fact likely to sexually abuse a male child, we are not persuaded that the rule of general applicability enunciated in *P.A.*, and repeated by the *Andy G*. court, is grounded in fact. For this reason, we decline to adopt the reasoning of *P.A.* and *Andy G*. [¶] Since there is no evidence in the record that would tend to support a finding that [the father] has an interest in engaging in sexual activity with a male child, we cannot, despite the Agency's urging, conclude that [the father's] sexual abuse of his daughters—as aberrant as it is—establishes that [his son] is at substantial risk of *sexual abuse* within the meaning of section 300, subdivision (j), as defined in section 300, subdivision (d) and Penal Code section 11165.1." (*Maria R., supra* 185 Cal.App.4th at p. 68.)

**C. Substantial Evidence of Risk of Sexual Abuse**

The evidence of sexual abuse in this case, which father does not dispute on appeal, showed that father showered naked with E.G., "moving like a doggie" while he was on his back and E.G. was jumping on him. According to E.G., they "were in the shower for a long time." The evidence also showed that father rubbed E.G.'s private parts with his fingers and rubbed her chest with his hands. In addition, E.G cried when asked about acts of further abuse and told the CSW that she wanted her brothers to tell father to stop touching her, evidence that suggested the abuse was not limited to the incident in the shower. And, E.G.'s teacher testified to E.G.'s inappropriate sexual conduct at school, a fact that also support an inference that the abuse was not limited to a single incident but

rather recurrent enough to cause such overt and inappropriate sexual behavior by a six-year-old girl. Although father denied engaging in the abuse, the juvenile court found that he was not credible, including presumably his denial of any sexual abuse of his other children. Moreover, the juvenile court accepted as credible the statements and testimony of E.G.'s teacher, including her description of E.G.'s sexually inappropriate classroom and school yard behaviors.

Based on the record, we conclude that there was sufficient evidence to support a reasonable inference that father's behavior towards six-year-old E.G. was "so sexually aberrant that both male and female siblings of [E.G. were] at substantial risk of sexual abuse . . . if left in the home." (*In re Karen R., supra,* 95 Cal.App.4th at pp. 90-91.) Father's behavior was not as violent or invasive as the forcible rapes at issue in *Karen R.*, but it was more egregious than the two isolated incidents of inappropriate touching at issue in *P.A., supra,* 144 Cal.App.4th 1339 and was similar to a certain extent to the behavior of the father towards his two step daughters in *Andy G., supra,* 183 Cal.App.4th 1405. Given the inferences that father's conduct toward E.G. was not limited to the incident in the shower, it was reasonable for the juvenile court to conclude that he was a child molester who posed a risk of abuse, not only to E.G., but to all of the children in the home.

We recognize that our conclusion may be viewed as inconsistent with the recent holding in *Maria R., supra,* 185 Cal.App.4th 48. But under the applicable standard of review, we must resolve all conflicts in favor of the juvenile court's order and indulge all reasonable inferences from the evidence. We cannot substitute our deductions for those of the juvenile court. When the evidence of abuse in this case is reviewed within the limitations of those well-established principles, we cannot conclude that the juvenile court's finding of a substantial risk of sexual abuse of E. and J. exceeded the bounds of reason.

## DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.